

**DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

**Chapter 7**  
**Case No. 09-19222-WCH**

**Adversary proceeding  
Case No. 10-01205**

**ETTS DEPARTMENT OF REVENUE'S ANSWER TO  
COMPLAINT FOR INTERPLEADER**

The Defendant, Massachusetts Department of Revenue (“MDOR”), answers the complaint commencing the above-captioned adversary proceeding, filed by Jessica E. Murphy, attorney for Sovereign Bank (the “Plaintiff”).

## **JURISDICTION AND VENUE**

1. The allegations set forth in Paragraph 1 are statements and conclusions of law, which require no answer.

## PARTIES

2. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 2.
3. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 3.
4. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 4.
5. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 5.
6. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 6.
7. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 7.
8. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 8.
9. MDOR admits the factual allegations set forth in Paragraph 9, however the proper mailing address is 100 Cambridge Street, Seventh Floor, P.O. Box 9565, Boston, MA 02114-9565.
10. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 10.
11. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 11.
12. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 12.
13. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 13.
14. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 14.
15. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 15.
16. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 16

**REQUEST FOR INTERPLEADER**

17. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 17.
18. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 18.
19. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 19.
20. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 20.
21. MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 21.
22. (a) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(a).
  - (b) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(b).
  - (c) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(c).
  - (d) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(d).
  - (e) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(e).
  - (f) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(f).
  - (g) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(g).
  - (h) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(h).
  - (i) MDOR admits the factual allegations set forth in Paragraph 22(i).
  - (j) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(j).

(k) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(k).

(l) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(l).

(m) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(m).

(n) MDOR is without sufficient information to admit or deny the factual allegations set forth in Paragraph 22(n).

23. The Plaintiff's prayers for relief do not require any answer.

#### **MDOR'S FURTHER ANSWER**

On August 1, 2008, MDOR assessed Debra Jean Silva with sales tax on meals for the periods ending July 31, 2007 and August 31, 2007 in the total amount of 31,993.03 plus statutory interest and penalties and on October 20, 2008 assessed Debra Jean Silva for sales tax on meals of the period ending September 30, 2008 in the amount of \$5,245.25 plus additional statutory interest and penalties (the "Tax Liability").

Pursuant to G.L. c. 62C, §50, a Massachusetts lien "shall arise at the time the assessment is made..." Therefore, the lien relates back to the date of assessment and its priority should be determined based on the date of assessment. See *United States v. Berk*, 374 B.R. 385 (D. Mass. 2007).

WHEREFORE, MDOR respectfully requests that this Honorable Court:

1. Enter an order disbursing to MDOR the amount of Surplus Funds, in which this Court finds MDOR to have an interest; and
2. Enter such other and further relief as may be just and proper.

**Respectfully submitted,**

**Dated: August 17, 2010**

**NAVJEET K. BAL, COMMISSIONER  
MASSACHUSETTS DEPARTMENT OF REVENUE**

**By her attorneys,**

**MARTHA COAKLEY  
ATTORNEY GENERAL OF MASSACHUSETTS**

**Kevin W. Brown, General Counsel and  
Special Assistant Attorney General**

**/s/ David T. Mazzuchelli  
David T. Mazzuchelli (BBO # 565641)  
Counsel to the Commissioner  
Massachusetts Department of Revenue  
Litigation Bureau  
100 Cambridge Street, P. O. Box 9565  
Boston, MA 02114  
(617) 626-4022  
E-mail: mazzucheld@dor.state.ma.us**

**CERTIFICATE OF SERVICE**

I, David T. Mazzuchelli, hereby certify that I have this day served a copy of the within ANSWER TO COMPLAINT, electronically or by first classmail, postage prepaid, upon the parties or persons appearing on the accompanying SERVICE LIST as indicated.

/s/ David T. Mazzuchelli  
David T. Mazzuchelli

Dated: August 17, 2010

## **SERVICE LIST**

Sovereign Bank, Plaintiff v. Robert B. Ours Co., Inc. et. al, Defendants,  
Adversary Proceeding No. 10-01205

### **Electronic List:**

Jessica Murphy [jmurphy@mirickoconnell.com](mailto:jmurphy@mirickoconnell.com)

### **Manual List:**

Hallsmith-Sysco Food Services, LLC  
C/O Dorothy Hebert  
380 So. Worcester Street  
Norton, MA 02766

Royal Bank America Leasing  
550 Township Line Road  
550 Township Line Road  
#425  
Blue Bell, PA 19422

Stephen Shamban  
222 Forbes Rd.  
P.O. Box 850973  
Braintree, MA 02184

Clement A. Silva  
PO Box 402  
N. Truro, MA

Debra J. Silva  
PO Box 402  
N. Truro, MA